

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Office of Conservation and Coastal Lands
Honolulu, Hawaii

Board of Land and Natural Resources
Department of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

FILE NO.: CDUA HA-3288
REF: OCCL: MC
Acceptance Date: January 11, 2006
180 Exp. Date: July 10, 2006

June 9, 2006

REGARDING: Single Family Residence
and Peach Palm Cultivation

APPLICANT: Richard and Lauree Johnson
27-1039 Māmalahoa Highway
Pepe'ekeo HI 96793

AGENT: Marissa Furfaro, PBR Hawaii
101 Aupuni Street
Hilo Lagoon Center
Hilo HI 96720

LANDOWNER: Same as applicant

LOCATION: Pāpa'ikou, South Hilo, Hawaii

TMK: (3) 2-7-008:128 [residence] and 2-7-030:026 [access]

AREA OF USE: 4,875.51 square feet for Residence;
≤ 2 acres for Agriculture

SUBZONE: Resource

DESCRIPTION OF AREA:

The proposed project is located on an irregularly shaped 15.98-acre coastal property between He'eka Point and Kukui Point in Pāpa'ikou, South Hilo, Hawaii, TMK (3) 2-7-008:128 (see **Exhibit 1: Regional Location Map**). The parcel is bounded by a road easement to the south,

`Auku`u Stream to the west and north, and the ocean to the east. `Auku`u Stream flows through a steep gully, and a steep cliff marks the shore.

A site visit by Dr. Charles Fletcher in November 2005 concluded that the gully was a relatively stable feature that did not present an erosion threat provided that the area remains vegetated and that human landscaping was taken with care. His analysis showed that the cliffside indicated recent episodes of soil creep, but that further erosion analysis was not needed provided that a professional landscaper oversee any fill activities and that careful attention is paid to the re-vegetation of the slopes.

There are other residential parcels to the south and west. The parcels to the north are undeveloped. Access to the property is off of the Old Māmalahoa Highway via a 0.38-acre easement, TMK (3) 2-7-030:026, shared with neighboring property owners.

Approximately 2/3 of the subject TMK lies in the Agriculture District, and 1/3 lies in the Resource Subzone of the Conservation District (see **Exhibit 2: State Land Use Classification Boundary Interpretation**).

Hala (*Pandanus odoratissimus*), naupaka (*Scaevola taccada*), and ironwood (*Casuarina equisetifolia*) line the tops of the sea cliff and the northern section of the `Auku`u gully. Invasive species dominate the mauka portions of the gulch and the southern coastal fringe. The applicant has planted 7 acres of peach palms (*Bactric gasipaes*) in the western portions of the Agricultural District. The remainder of the property is composed of grasses and non-native ground cover (see **Exhibits 3 & 4: Site Photographs**).

PROPOSED PROJECT:

The applicant proposes to construct a single family residence on the parcel, expand peach palm cultivation into the Conservation District, and landscape the areas makai and immediately mauka of the residence.

The applicant proposes to build a SFR that will rest entirely within the Conservation District portion of the parcel. The floor area totals 4875.51 square feet. This includes a 742.03 ft² lanai, 1859.98 ft² of living space, a 519.5 ft² attached third bedroom unit, a 972.0 ft² garage, a 525 ft² lap pool, a 51 ft² spa, and 203 ft² of outdoor stairs (see **Exhibit 5: Mauka and Makai Elevations**, and **Exhibit 6: Third Bedroom**).

The main residence will have a post and pier foundation, the third bedroom a slab foundation. The third bedroom will not be used as a separate dwelling, rental unit, bed and breakfast, or any other commercial purpose. The third bedroom will be attached to the main living space by a covered walkway.

The maximum height of the structure is 24 feet, one foot below the maximum allowable height. The dwelling is set back 191' from the shore, 29' from the edge of the stream bank, 70' from the

southern perimeter, and 1200' feet from the western perimeter. The setback for the proposed SFR exceeds the required minimum setback of fifteen feet from all sides of the subject parcel.

The wastewater system will be an individual septic system makai of the house and as far from the cliff as possible. According to the CDUA *the proper procedures will be followed to obtain a DOH wastewater permit ... and best management practices will be followed.*

Landscape plans include reestablishing grass makai of the residence, filling in an eroded area, constructing a stone retaining wall to create a grass terrace, installing TREX landscape edging along the sea cliff and stream bluff, and placing a 3' safety fence between the property and the sea cliff. The driveway will be placed with 3,991 square feet of permeable grass pavers (see **Exhibit 7: Site Plan**).

The planted areas will be cleared, immediately seeded with a quick growing grass such as rye mixed with a more permanent grass such as centipede or carpet grass. Native plants will be placed along the cliff's edge to reduce erosion. A previously eroded area will be kept heavily vegetated in order to stabilize the soil.

The applicants also propose to remove 23 ironwoods and 10 Alexandra palms (*Archontophoenix alexandrea*) from along the sea cliff edge, and to prune others, in order to further reduce erosion. Ironwoods are shallow rooted and can exacerbate cliffside erosion. Hala will be planted in areas where the ironwoods are removed.

The applicant notes an Archaeological Assessment of the subject property was conducted, and no significant cultural sites and/or deposits were discovered. No archaeological and/or historical resources would be adversely affected by the proposed project.

The landowners also plan to plant five acres of peach palms [*Bactris gasipaes*] in the parcel. This is in addition to the seven acres already planted in the Agriculture District. Approximately two acres of the new plantings will be in the Conservation District. The landowners will follow best management practices to mitigate impacts from the cultivation, including harvesting the palms in phases and fencing the area to protect the crop from feral animals.

AGENCY COMMENTS:

The CDUA and Draft Environmental Assessment were referred for review and comment to the DLNR – Division of Forestry and Wildlife, Historic Preservation Division, Land Division; Hawai'i District Land Office; Department of Agriculture, Hawai'i County Planning Department, Office of Hawaiian Affairs, Hawai'i County Council Member Donald Ikeda, and the Department of Health Office of Environmental Quality Control. The documents were also made available to the general public at the Hilo Public Library. A public meeting was held on March 20 2006 at the Hilo Lagoon Conference Center. Notice of the meeting was given in MidWeek, the Honolulu Star-Bulletin, and Hawai'i Tribune Herald.

The following comments were received:

County of Hawai'i Planning Department

The planning department notes, pursuant to Hawai'i Revised Statutes and Planning Commission Rule 9-4(10)B(viii) relating to Special Management Areas, that agriculture is exempt from the definition of development and is thus determined to be a permitted activity.

The Department also notes that there is a discrepancy in the site plans. The semi-detached unit is labeled "Recreation Room" on some sheets and a "Third Bedroom" on others.

The Department notes that the shoreline setback area cannot be determined without a certified shoreline survey. Proposed improvements that might fall within this area include the fence, imported boulders, groundcover, and tree removal.

Applicant Response

The third bedroom will be attached to the main house via a covered walkway, and will be used as either a third bedroom or recreation room.

The property is on a sea cliff, and based on a conversation with Larry Brown of the HI County Planning Department the top of the sea cliff can be used as the de facto shoreline to determine the setback area. The applicant also forwarded to the department a copy of the erosion hazard assessment study by Dr. Charles Fletcher.

Office of Hawaiian Affairs

OHA notes that although the area has been heavily modified by years of commercial agriculture, they would like to see an archeological monitoring plan drafted. The plan should provide for on-call and on-site monitoring as appropriate, and should include periodic spot checks by a qualified archaeologist.

OHA also requests that, should iwi or Native Hawaiian cultural or traditional deposits be found work will cease and appropriate agencies contacted pursuant to applicable law.

Applicant Response

Applicant notes that the property has a long history of agriculture use, and quotes Historic Preservation's statement that it is "unlikely that any significant historic sites will be found." Applicant does not believe that an archaeological monitoring plan will be necessary.

Applicant affirms that, should iwi or native Hawaiian cultural or traditional deposits be found, they would cease work and notify the appropriate agencies.

DLNR – Historic Preservation Division

There are no records of historic sites on the property, and it is unlikely that significant historic sites will be found.

DLNR – Land Division

No Comments

OCCL

OCCL notified the applicant that they are concerned that the semi-detached unit can be used now or in the future as a separate dwelling, which would violate Conservation District SFR design guidelines. OCCL asked that the wet bar and internal wall be removed, or that the unit be attached to the main house.

Applicant Response

Applicant states that they have no intention of using the unit as a separate dwelling. Applicant revised the floor plan to remove the wet bar. Applicant states that the internal wall is related to the bathroom, which was an approved facility for the room, and has not removed it from the revised plan.

Office of Environmental Quality Control

No Comments

Public Meeting

No comments came out of this meeting.

ANALYSIS:

Following review and acceptance for processing, the applicant was notified, by letter dated January 24, 2006 that:

1. The SFR was an identified land use within the Conservation District, pursuant to Hawai'i Administrative Rules (HAR) §13-5-24 *Identified land uses in the resource subzone, R-8 Single Family Residence, (D-1)*. Agriculture was an identified use pursuant to HAR §13-5-23 L-1 *Agriculture, (D-1) Agriculture within an area of more than one acre*. Permits were required for both these uses, and that the final decision as to whether to grant or deny the permits lies with the Board of Land and Natural Resources (BLNR).
2. Pursuant to HAR §13-5-40 *Hearings*, a public hearing was required.
3. Pursuant to HAR §13-5-31 *Permit applications*, the permit required that an environmental assessment be carried out. The draft environmental assessment (DEA) was published in the February 8, 2006 issue of the Office of Environmental Quality Control (OEQC)'s *Environmental Notice*.

A Finding of No Significant Impact (FONSI) was published in the OEQC's *Environmental Notice* on May 23, 2006. OCCL notes that the 30-day challenge period for the FONSI ends June 22, 2006. OCCL is submitting this report in advance of that date in order to complete the process before the 180-day expiration date for the CDUA.

§13-5-30 CRITERIA:

The following discussion evaluates the merits of the proposed land use by applying the criteria established in Section 13-5-30 HAR.

- 1) *The proposed use is consistent with the purpose of the Conservation District.*

The objective of the Conservation District is to conserve, protect and preserve the important natural resources of the State through appropriate management and use to promote their long-term sustainability and the public health, safety and welfare.

Staff is of the opinion that the proposed action will increase structural density on a vacant parcel. While staff would prefer that any SFR be sited in the Agriculture District, staff has found that the proposed use within the Conservation District will not be detrimental to conservation values.

- 2) *The proposed land use is consistent with the objectives of the Subzone of the land on which the use will occur.*

The objective of the Resource Subzone is *to develop, with proper management, areas to ensure sustained use of the natural resources of those areas.*

Staff notes that both the proposed SFR and the agriculture use are identified land uses within the Resource Subzone. With the possible exception of the semi-detached third bedroom, the proposed residence meets the design guidelines outlined in HAR Chapter 13-5. Staff notes that the proposed project has met the restrictive criteria and that adequate mitigation measures have been taken to the protected natural resources of the coastal area.

- 3) *The proposed land use complies with the provisions and guidelines contained in Chapter 205A, HRS entitled "Coastal Zone Management", where applicable.*

The project complies with the policies and objectives of the Coastal Zone Management Program.

- 4) *The proposed land use will not cause substantial adverse impact to existing natural resources within the surrounding area, community or region.*

Staff notes that the proposed project will not have any adverse impact to existing natural resources within the surrounding area, community or region, provided that adequate mitigation measures are implemented. Staff notes that the proposed project will not detract from the rural character of the area.

- 5) *The proposed land use, including buildings, structures and facilities, shall be compatible with the locality and surrounding areas, appropriate to the physical conditions and capabilities of the specific parcel or parcels.*

Staff is of the opinion the proposed SFR will fit into the locality and surrounding areas, with the use of Best Management Practices and without significant or deleterious effects to the locality, surrounding area and parcel.

- 6) *The existing physical and environmental aspects of the land, such as natural beauty and open space characteristics, will be preserved or improved upon, whichever is applicable.*

Staff notes the applicant has taken the appropriate steps to mitigate any potential impacts, and to maximize and enhance the natural beauty and open space characteristics of the subject parcel. The proposed project is intended to blend in visually with the surrounding area.

- 7) *Subdivision of land will not be utilized to increase the intensity of land uses in the Conservation District.*

The proposed project does not involve subdivision of Conservation District land.

- 8) *The proposed land use will not be materially detrimental to the public health, safety and welfare.*

The proposed action will not be materially detrimental to the public health, safety and welfare. Staff concurs with the applicant.

DISCUSSION:

The SFR and peach palm cultivation are identified land uses in the Resource Subzone pursuant to HAR§13-5-24 *Identified land uses in the resource subzone, R-8 Single Family Residence, (D-1)* and HAR §13-5-23 *L-1 Agriculture, (D-1) Agriculture within an area of more than one acre.*

The residence is 4,872 square feet and occupies The parcel in question was once cultivated in sugar cane, and was later used for diversified agriculture. Both the residence and palm cultivation are similar to other land uses in the neighborhood.

The landscaping proposals have been reviewed by appropriate agencies, and the applicants have made amendments to the project as the plan progressed and comments came in. Trimming ironwoods and replanting hala on the coastal fringe will potentially help reduce erosion.

OCCL does not believe that there will be any significant negative environmental or social impacts from the residence, palm cultivation, or landscaping.

OCCL continue to have concerns regarding the semi-attached third bedroom / recreation room. Our concern is that it could be used immediately or in the future as a separate dwelling, which would violate Conservation District rule guidelines. The presence of internal walls – creating separate sleeping and living spaces – the wet bar, and the detached nature of the structure from the main house all contribute to this. The applicant has removed the wet bar from the plan. OCCL asks that the internal wall also be removed as a condition of granting the permit. **Exhibit 8: Internal Wall** shows the third bedroom, with the wall in question in bold.

Therefore, staff recommends the following:

RECOMMENDATION:

That the Board of Land and Natural Resources APPROVE CDUA HA-3288 for the proposed Johnson Single Family Residence in Pāpa'ikou, South Hilo, Hawai'i, subject to the following terms and conditions:

1. The applicant understands that if there is an appeal filed on the Final Environmental Assessment, the Board's approval is temporarily stayed until the end of the appeal;
2. The applicant shall comply with all applicable statutes, ordinances, rules, and regulations of the federal, State and county governments, and the applicable parts of Section 13-5-42, HAR;
3. The applicant, its successors and assigns, shall indemnify and hold the State of Hawai'i harmless from and against any loss, liability, claim or demand for property damage, personal injury or death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of this permit;
4. The applicant shall comply with all applicable Department of Health administrative rules. Particular attention should be paid to Hawai'i Administrative Rules (HAR), Section 11-60.1-33, "Fugitive Dust" and to Chapter 11-46, "Community Noise Control," and Chapter 11-54 National Pollutant Discharge Elimination System;

5. Before proceeding with any work authorized by the Board, the applicant shall submit four copies of the construction plans and specifications to the Chairperson or his authorized representative for approval for consistency with the conditions of the permit and the declarations set forth in the permit application. Three copies will be returned to the applicant. Plan approval by the Chairperson does not constitute approval required from other agencies;
6. Any work or construction to be done on the land shall be initiated within one year of the approval of such use, in accordance with construction plans that have been approved by the Department; further, all work and construction must be completed within three years of the approval;
7. The applicant shall notify the Office of Conservation and Coastal Lands in writing prior to the initiation, and upon completion, of the project;
8. Where any interference, nuisance, or harm may be caused, or hazard established by the use, the applicant shall be required to take measures to minimize or eliminate the interference, nuisance, harm, or hazard;
9. The applicant will use Best Management Practices for the proposed project;
10. The applicant will give preference towards using native plants for the remaining landscape work;
11. The applicant understands and agrees that this permit does not convey any vested rights or exclusive privilege;
12. In issuing this permit, the Department and Board have relied on the information and data that the applicant has provided in connection with this permit application. If, subsequent to the issuance of this permit, such information and data prove to be false, incomplete or inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and/or the Department may, in addition, institute appropriate legal proceedings;
13. In the event that unrecorded historic remains (i.e., artifacts, or human skeletal remains) are inadvertently uncovered during construction or operations, all work shall cease in the vicinity and the applicant shall immediately contact the State Historic Preservation Division;

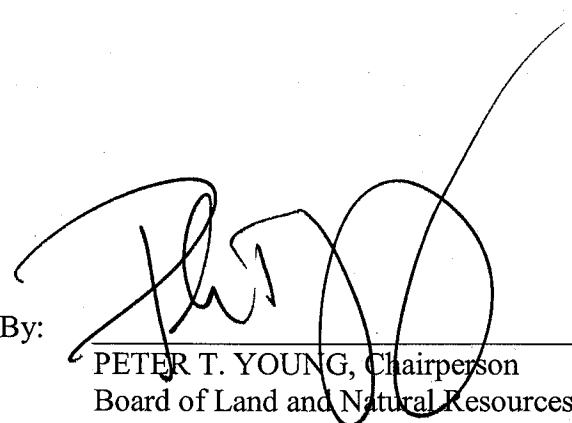
14. The applicant shall provide documentation (i.e. book/page document number) that this approval has been placed in recordable form as a part of the deed instrument, prior to submission for approval of subsequent construction plans;
15. The applicant removes the internal wall from the third bedroom so that the unit contains one single room with one bathroom, rather than one bedroom, one sitting room, and one bathroom;
16. Other terms and conditions as may be prescribed by the Chairperson; and
17. That failure to comply with any of these conditions may render this Conservation District Use Permit null and void.

Respectfully Submitted,

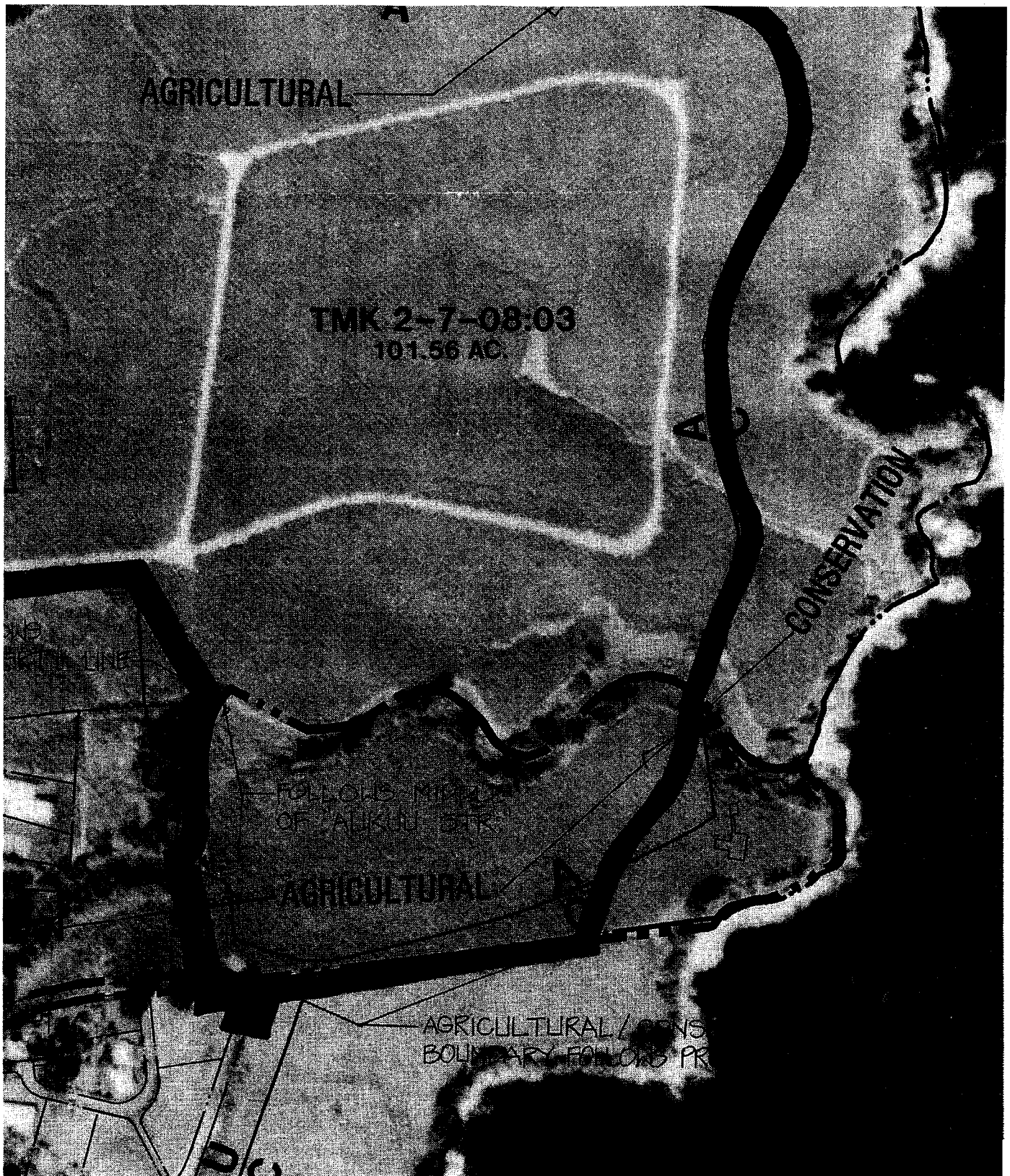


Michael Cain
Staff Planner



By:



PETER T. YOUNG, Chairperson
Board of Land and Natural Resources



LEGEND

-  Project Site Boundary
-  Approximate Location of the Residence

Source: State Land Use Commission
Land Use District Boundary Interpretation Map
July 26, 1990

Figure 3

State Land Use Classification Boundary Interpretation
Johnson Single-Family Residence

NORTH

LINEAL SCALE (FEET)

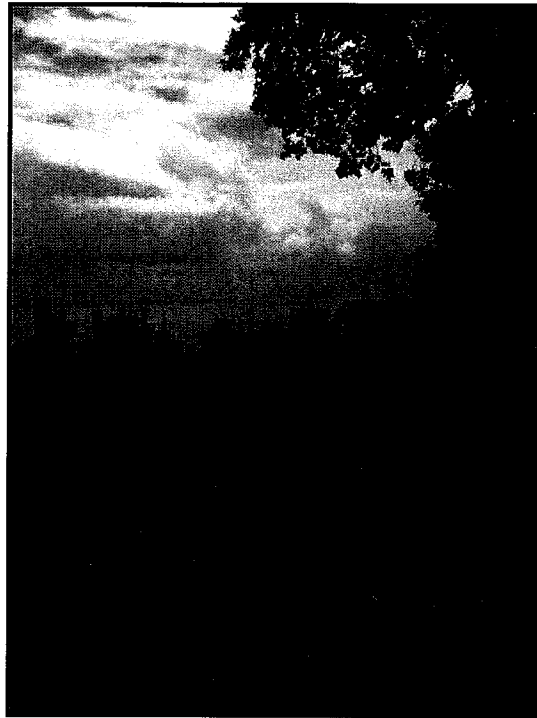
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NOT TO SCALE



EXHIBIT 2



Photograph 1

Existing, unpaved access looking *makai* (TMK: 2-7-008:128).



Photograph 2

View from the proposed house site, looking *mauka*.



Johnson Single-Family Residence

Site Photographs

Photos

1 & 2

EXHIBIT 3



Photograph 3
Existing peach palm (*Bactris gasipaes*) crop.



Photograph 4
Southern edge of sea cliff.



Johnson Single-Family Residence

Site Photographs

Photos

3 & 4

EXHIBIT 4

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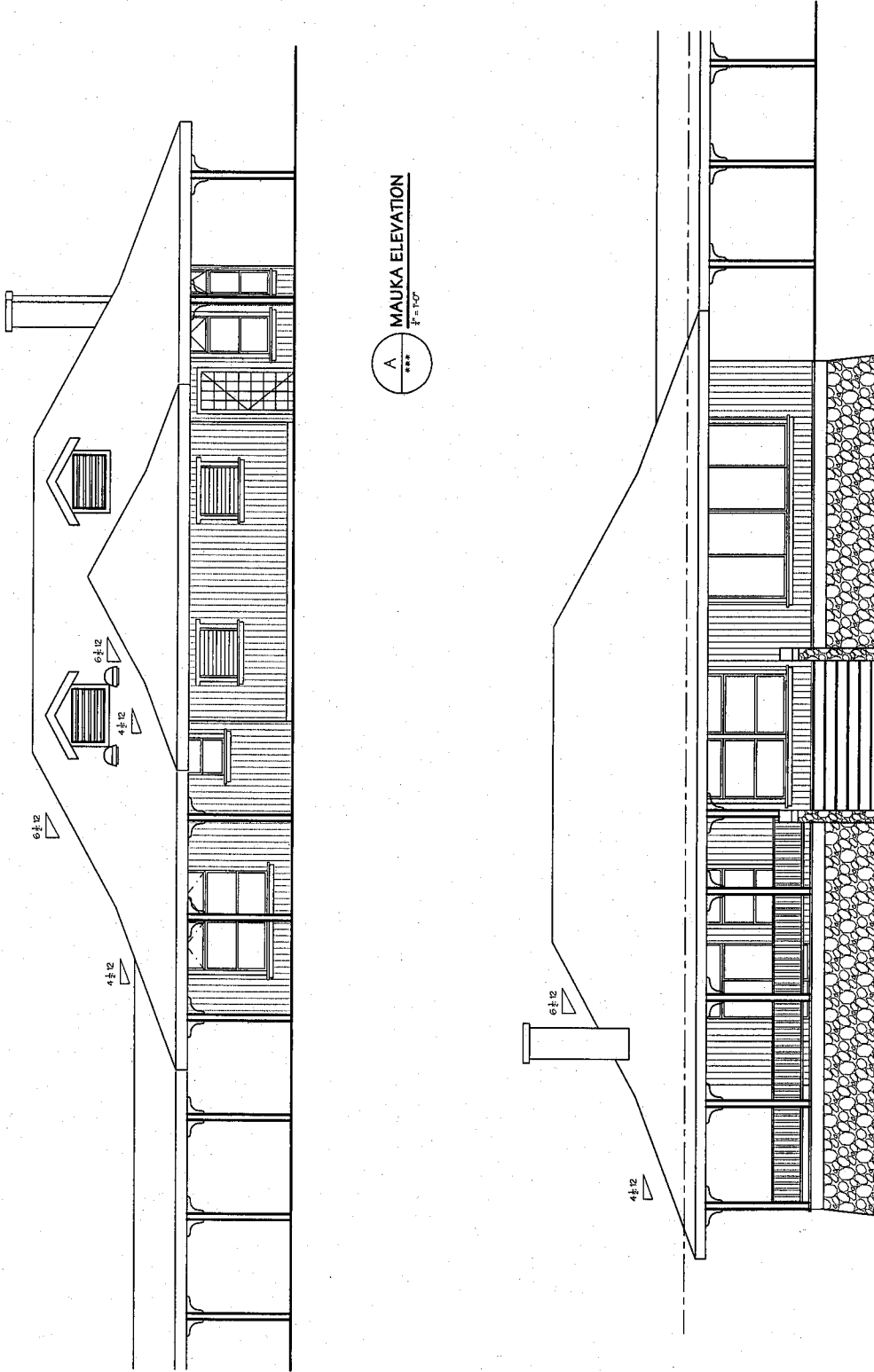
JOHNSON RESIDENCE
Oahu, Island of Hawaii
T.M.K.: (3) 2-7-08: 128

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0 1 2 4 8 12
GRAPHIC SCALE: 1/4"=1'-0"

B MAKAII ELEVATION
3/4"=1'-0"

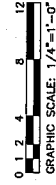
A MAUKA ELEVATION
3/4"=1'-0"



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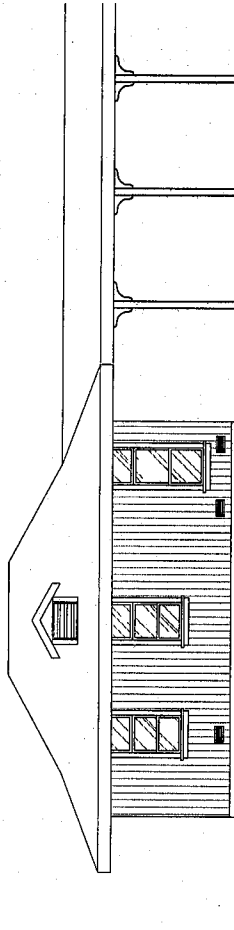
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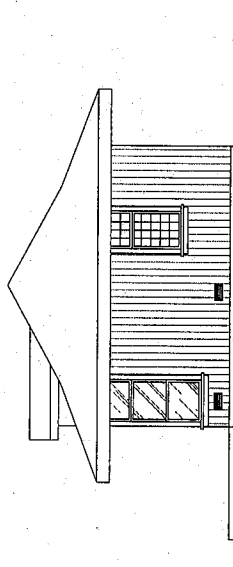
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BEDROOM #3 - MAUKA ELEVATION
3/4" = 1'-0"



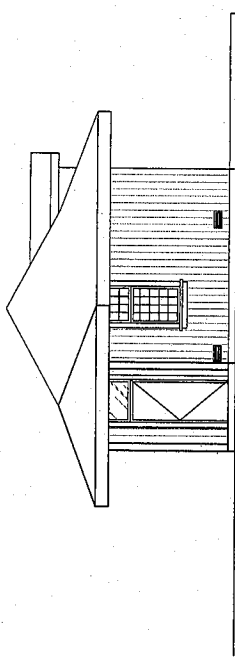
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BEDROOM #3 - HONOKAA ELEVATION
3/4" = 1'-0"



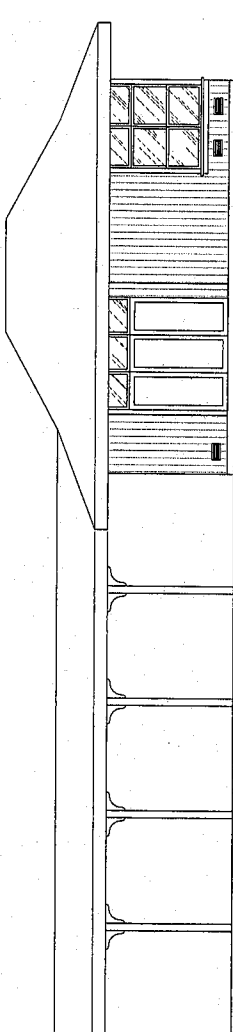
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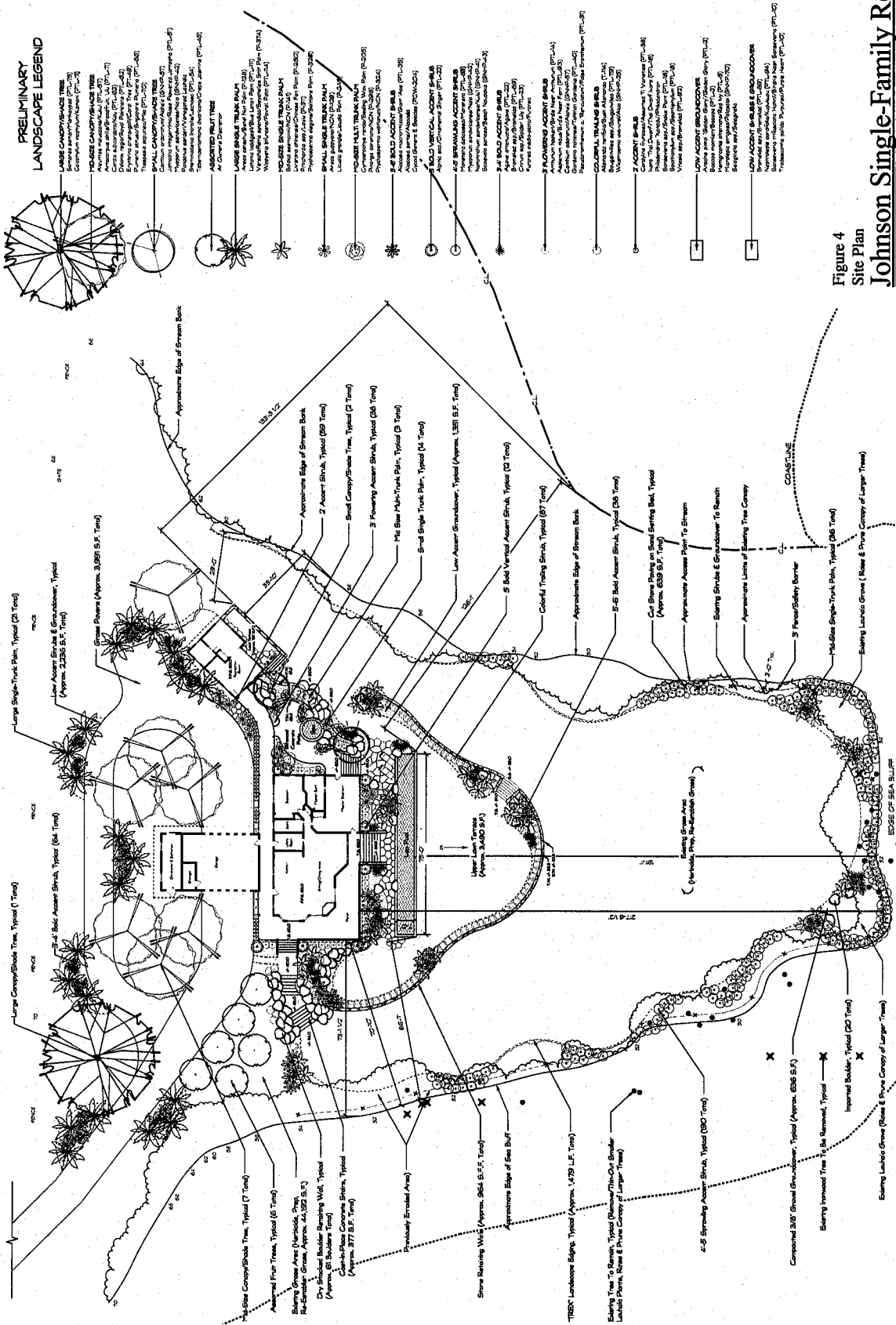
BEDROOM #3 - HILO ELEVATION
3/4" = 1'-0"



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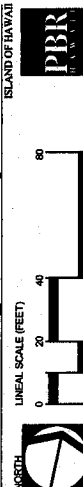
BEDROOM #3 - MAKAI ELEVATION
3/4" = 1'-0"

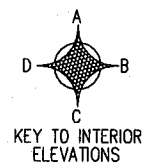
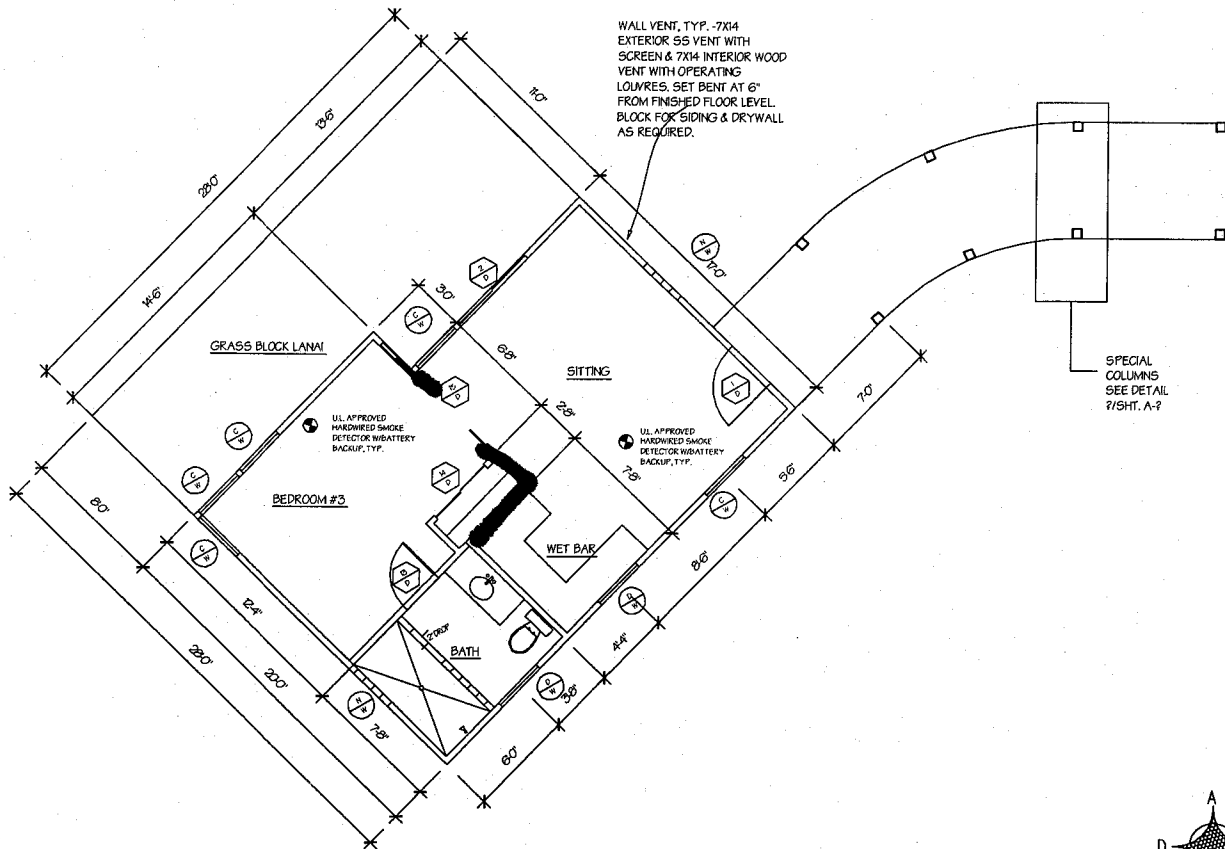




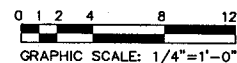
Source:
LEONARD BISEL ASSOCIATES, LLC
 LANDSCAPE ARCHITECTS & PLANNERS

Figure 4
 Site Plan
Johnson Single-Family Residence
 ISLAND OF HAWAII





BEDROOM #3 FLOOR PLAN
1/4" = 1'-0"



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A-*

Internal Wall

EXHIBIT 8